

**ACT 245**

**H.B. NO. 19**

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, pursuant to Act 246, Session Laws of Hawaii 2005, the school impact fee working group was tasked with analyzing salient issues, including “fair share” practices and enrollment projections by the department of education, alternative funding mechanisms and best practices utilized by

other jurisdictions nationwide, and different infrastructure needs imposed by different types of development, including infill. The working group was also asked to submit proposed legislation or procedures for implementing its recommendations on determining school impact fees within identified school impact districts.

In its report to the legislature entitled Hawaii School Impact Fee Study (December 2006), the working group recommended that the department of education determine each school impact district appropriate student generation rate.

The purpose of this Act is to implement the working group's recommendation for implementing a new method for financing, in part, new or expanding existing department of education educational facilities in partnership with developers of new residential developments. This Act reflects a general methodology and approach for identifying need areas and calculating appropriate school impact fees for new residential developments. It also recognizes the need for more detailed planning for implementation of this Act by the department of education, and recognition of how the methodology will be applied in new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

## **“PART . SCHOOL IMPACT FEES**

**§302A-A Findings.** New residential developments within identified school impact districts create additional demand for public school facilities. As such, once identified, new residential developments will be required to contribute toward the construction of new or expansion of existing public school facilities through:

- (1) The land requirement, either through an in lieu fee or actual acreage (unless land is not required in the school impact district); and
- (2) The construction requirement either through an in lieu fee or actual construction based on the proportionate share of the need to construct additional facilities.

A study commissioned by the State has identified the land dedication requirement that is consistent with proportionate fair-share principles and the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school impact fees proportionate to their impacts. This part establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school facilities needed to serve new residential developments, as determined in section 302A-G.

**§302A-B Definitions.** As used in this part, the following terms shall have the following meanings unless the context indicates otherwise:

“Acres/student” means the number of acres required per student based on design standards for schools.

“Construction cost” means the net cost to construct a school, including without limitation planning, design, engineering, grading, permits, construction, and construction and project management, but not including the cost to acquire land. The intent of the school impact fee calculation is that new developments should not be charged for a higher level of service than is being provided to existing developments.

A reasonable measure of the level of service is the percentage of classrooms that are in permanent structures, as opposed to portable buildings.

“Cost per student” means the construction cost for a school per student (actual school construction cost divided by enrollment capacity).

“Cost/unit” means the impact fee for school construction (land and construction).

“County” means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

“Developer” means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any residential development activity.

“Dwelling unit” or “unit” means a multi-family or single-family residential unit.

“Fee in lieu” means a fee determined pursuant to section 302A-F.

“Land component” means a fee simple property that is vacant and improved (with infrastructure).

“Multi-family” means any dwelling unit other than a single family dwelling unit.

“Multi-family unit count” means the total multi-family dwelling units planned for a proposed development.

“New residential development” means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include “lot only” developments (when the dwelling unit will not be built by the developer), and include condominiums, additional dwelling units as defined by each county, and subdivisions.

“Owner” means the owner of record of real property or the owner’s agent.

“Proportionate share” means the pro-rata share of the school impact fee attributed to the specific development based on the student generation rate from the project.

“Recent school construction averages” means the department’s historical average acres required and enrollment capacity for elementary (K–5), middle (6–8), and high (9–12) schools. Based on existing school construction data, the historical average design standards are as follows:

	Acres/school	Enrollment/school	Acres/student
Elem.	12.5 acres	800 students	.0156 acres
Middle	16.5 acres	1,500 students	.0110 acres
High	49 acres	1,600 students	.0306 acres

“Revenue credit” means the state general tax revenues under chapter 237 that will be generated by the new residential unit and used to fund school capital facilities and pay for outstanding debt on existing facilities.

“School facilities” means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

“School impact district” means a geographic area designated by the board where anticipated growth will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area and will primarily serve new housing units within the area.

“School impact fee: construction cost component” means ten per cent of the construction cost associated with the construction of a new school or expansion of an existing school facility.

“School impact fee: land component” means the pro rata share of the fair market value of the fee simple land or acreage attributed to the specific development based on the student generation rate from the project.

“Single-family” means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

“Single-family unit count” means the total single-family units planned for a proposed development.

“Student generation rate” means the number of students generated by each multi-family and single-family unit when a residential development has matured and enrollment no longer fluctuates, or achieves a steady state.

**§302A-C Applicability and exemptions.** (a) Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or
- (3) A condominium property regime approval for the project,

shall be required to fulfill the land requirement and vertical construction requirement of the department.

(b) The following shall be exempt from this section:

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing which is or will be paying the transient accommodation tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an executed education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction.

**§302A-D Designation of school impact districts.** (a) The board shall designate a school impact district for school impact fees only after holding at least one public hearing in the area proposed for the school impact district. The written analysis, prepared in accordance with subsection (b), shall be made available to the public at least thirty days prior to the public hearing. Notice of the public hearing shall be made as provided in section 1-28.5. The notice shall include a map of the proposed school impact district and the date, time, and place of the public hearing.

(b) Prior to the designation of a school impact district, the department shall prepare a written analysis that contains the following:

- (1) A map and legend describing the boundaries of the area, which may range from one school to one or more high school complexes; and
- (2) Analysis to support the need to construct new or expand existing school facilities in the area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density, and other applicable plans.

**§302A-E Impact fee analysis.** (a) Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, the following:

- (1) An analysis to determine appropriate student generation rates by housing type (multi-family unit count and single-family unit count) for new developments in the area. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;

- (2) Student generation rates, based on full build-out of the development when student generation rates are anticipated to be in a steady state mode (permanent facility);
- (3) Analysis of the initial development period, when student enrollments are anticipated to peak (to determine capacity of facilities);
- (4) An analysis to identify the percentages of existing statewide student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, as opposed to portable buildings, in surrounding high school complexes;
- (5) Calculation of the current statewide level of service, which shall be the ratio of current student capacity at all school levels to the current enrollment at all school levels;
- (6) An analysis of proposed redistricting, listing the advantages and disadvantages by making more efficient use of existing underutilized assets;
- (7) An analysis of appropriate school land area and enrollment capacity, which may include non-traditional (i.e. mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high growth areas within existing urban developments; and
- (8) An analysis to identify the percentages of existing student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, and the percentages that are located in portable buildings in surrounding high school complexes.

**§302A-F Impact fee: land component-determining the amount of land or fee in lieu.** (a) The area requirements for new school facilities shall be determined based on the recent school construction averages.

(b) The procedure for determining whether the dedication of land is required or a payment of a fee in lieu is required for a new school facility shall be as follows:

- (1) A new residential development of greater than or equal to fifty units, shall include a written agreement, prior to the issuance of a building permit, between the owner or developer of the property and the department, under which the owner or developer has:
  - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
  - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) New residential developments of less than fifty units shall include a written agreement, between the owner or the developer of the property and the department, under which the owner or developer has agreed to a time specified for payment for the fee in lieu prior to the issuance of the building permit;
- (3) Prior to approval of any subdivision, change of zoning, or any other approval for a:
  - (A) Residential development equal to or greater than fifty units; or
  - (B) Condominium property regime development of fifty units or more,

the department shall notify the approving agency of its determination on whether to require the dedication of land, the payment of a fee in lieu thereof, or a combination of both;

- (4) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land;

- (5) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement;
- (6) Whether the department determines to require land dedication or the payment of a fee in lieu, shall be guided by the following criteria:
  - (A) The topography, geology, access, value, and location of the land available for dedication;
  - (B) The size and shape of the land available for dedication;
  - (C) The location of existing or proposed schooling facilities; and
  - (D) The availability of infrastructure; and
- (7) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final.

(c) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

(d) The developer or owner of new residential developments of greater than fifty units shall either pay the in lieu fee based on the land value as determined in subsection (c) or convey appropriate acreage as determined in subsection (b). When conveying the fee simple interest for the new or expanded school facility, the developers shall be credited the difference between the fair market fee simple value of the property and the developers' proportionate share of the value of the land as determined in subsection (c) against any impact fees for construction. Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.

(e) The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land calculated according to subsection (b) multiplied by the value per acre of land determined pursuant to subsection (c).

**§302A-G Impact fee: construction cost component – determining the cost per unit.** (a) The construction cost component of the school impact fees shall be calculated using the following factors:

- (1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;
- (2) For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten year average construction of whatever components are required to expand the school using the Honolulu assessment district in 2006 as the base;
- (3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropri-

ate cost factor in subsection (c). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and

(4) Student generation rates, as defined in section 302A-B.

(b) The student generation rate for each school type (elementary, middle or intermediate, and high school) shall be multiplied by the cost per student for each school type (elementary, middle or intermediate, and high school) to determine the cost/unit in the development.

(c) The State shall be divided into the following twenty-six geographically limited cost districts:

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

(d) At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.

(e) The construction cost component of the impact fees per dwelling unit shall be ten per cent of the amounts calculated according to the following formula:

Cost per dwelling unit from section 302A-G(b) minus any amount by which the revenue credit per dwelling unit from subsection (d) exceeds ninety per cent of the per unit construction cost.

(f) The amount of the fee shall be increased from the date it was determined to the date it is paid using the engineering news-record construction cost index, or an equivalent index if that index is discontinued.

(g) Any new residential development shall be required to obtain a written agreement between the owner or developer of the property and the department, under which the owner or developer has agreed to a time specified for payment, for its school impact fee construction cost component prior to the issuance of the building permit.

**§302A-H Accounting and expenditure requirements.** (a) Each designated school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected.

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities. If the land is never used for the school facility, it shall be returned to the developer, or the developer's successor in interest. Once used, the land may be sold, with the proceeds used to acquire land for school facilities in the same school impact district.

(c) Fee in lieu funds may be used for expenses related to acquiring a piece of land, including but not limited to surveying, appraisals, and legal fees. Fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district, construction costs, including architectural, permitting, or financing costs, or administrative expenses.

(d) Impact fees for the construction cost component shall be used only for the costs of new school facilities that expands the student capacity of existing schools or adds student capacity in new schools. School impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site. In the event of closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall be funded with non-school impact fee revenue. Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities. Impact fees for the construction cost component shall not be expended for:

- (1) Any costs related to the acquisition of land;
- (2) The maintenance or operation of existing schools in the district; or
- (3) Portable or temporary facilities.

(e) Impact fees and fees in lieu shall be expended or encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for the impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget.

**§302A-I Refunds.** If the fee in lieu or impact fee is not expended within twenty years of the date of collection, the department shall either:

- (1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or
- (2) Recommit the fees for another twenty-year period for construction of new schools in the school impact district, as authorized by the developer or the developer's successor.

**§302A-J Credits for land dedication.** (a) Any person subject to the land dedication requirements pursuant to this part may apply for credit against any similar dedication or payment accepted and received by the department for the project.



(b) Any credit provided for under this section shall be based on the value, determined in the manner provided under section 302A-F.

(c) Excess credits for land contributions prior to the effective date of this Act shall be based on the value; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this part.

**§302A-K Credits for impact fees.** (a) Any applicant subject to the school impact fee requirements pursuant to this part may apply for credit for any similar contribution, payment, or construction of public school facilities accepted and received by the department. No credit shall be authorized against the impact fees in lieu of land dedication.

(b) A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement. The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the school impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

(c) If private construction of school facilities is proposed by a developer after the effective date of this Act, if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- School impact fees.** No new residential development in a designated school impact district under chapter 302A shall be issued a residential building permit or condominium property regime building permit until the department of education provides written confirmation that the permit applicant has fulfilled its school impact fee requirements. This section shall only apply to new dwelling units.”

SECTION 4. **Implementation and interim procedures.** Recognizing the need for more details to fully implement this Act, and the fact that development is a continuous and ongoing process, the legislature finds that implementation shall be as follows:

- (1) Within one year of the effective date of this Act:
  - (A) The department of education shall identify school impact districts that shall include an assessment of high growth areas and school facility utilization throughout the State; and
  - (B) The department of education shall assess, analyze, and develop an appropriate methodology to determine future school facility needs in new, build-out (existing parcels with or without building), and in-fill developments;
- (2) During this interim period, developers who do not have an existing executed education contribution agreement or other like document with the department of education for the contribution of school sites or

payment of fees for school land or school construction with the department may:

- (A) Use the methodology outlined in this Act to determine land and construction cost components of the school impact fees for their developments based on student generation rates appropriate for their respective developments. These student generation rates shall be based on a full build-out and a reasonable expectation of permanent school facilities needed to accommodate a development at a steady state. These calculations shall be made in coordination with the department of education and subject to its approval; and
  - (B) Assist the department of education with temporary facility needs, separate and apart from impact fees for permanent facilities; and
- (3) During the interim period, the department of education shall assess other funding sources for the construction of new schools and the expansion of existing schools, such as a dedicated percentage of the conveyance tax that would be applied to all real estate sales transactions and the proceeds from which may be deposited into a dedicated funding source for public school construction.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. The department of education shall submit an annual report to the legislature on the state of the implementation of this Act no later than twenty days prior to the convening of each regular session.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved July 3, 2007.)

**Note**

1. Edited pursuant to HRS §23G-16.5.